

PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure Committee is considering whether to recommend proposed amendments for the Supreme Court's consideration to the Rules of Appellate Procedure. If you would like to comment on the proposed amendments set forth below before they are submitted to the Court for final consideration, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received on or before February 16, 2011 to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

12-302. Appearance, withdrawal or substitution of attorneys.

A. **Signatures.** The original of each brief, motion or other paper filed shall bear the signature of at least one of the counsel filing it, or if a party is proceeding pro se, the signature of the party. A "signature" means an original signature, a copy of an original signature, a computer generated signature or any other signature otherwise authorized by law.

B. **Appearance.** An attorney or firm shown as participating in the filing of any brief, motion or other paper shall, unless otherwise indicated, be deemed to have appeared in the cause. If an attorney's appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the limitation shall be specified on the cover page and in the signature block of each paper filed by the attorney pursuant to the limited appearance and the cover page and signature block of the paper shall include an address at which service may be made on the client.

C. **Withdrawal.** No attorney or firm that has appeared in a cause may withdraw from it without written consent of the appellate court, filed with the appellate court clerk. Such consent may be conditioned upon substitution of other counsel or the filing by the attorney's client of an address at which service may be made on the client or otherwise conditioned by the appellate court. Proof of service by the withdrawing attorney shall be made on all other parties.

D. **Notice.** Notice of withdrawal or substitution of counsel shall be given to all parties either by withdrawing counsel or by substituted counsel and proof of service filed with the appellate court clerk. If an attorney ceases to act in a cause for a reason other than withdrawal with consent, upon motion of any party, the appellate court may require the taking of such steps as it may be advised to insure that the cause will proceed with promptness and dispatch.

E. **Nonadmitted counsel in civil cases.**

(1) Counsel not admitted to practice law in New Mexico, but who are admitted to practice law and in good standing in another state or territory, may, upon compliance with Rule 24-106 NMRA sign briefs, motions and other papers, and may orally argue before the appellate

court, only in association with counsel admitted to practice law and in good standing in New Mexico. New Mexico counsel shall sign the first paper filed in the appellate court, and New Mexico counsel's name and address shall appear on all subsequent papers filed. Unless excused by the appellate court, New Mexico counsel shall also be present in person in all proceedings.

(2) Nonadmitted counsel shall state by affidavit that they are admitted to practice law and are in good standing to practice law in another state or country and that they have complied with Rule 24-106 NMRA. Such affidavit shall be filed with the first paper filed in the appellate court, or as soon as practicable after a party decides on representation by nonadmitted counsel. [~~Such an affidavit need not be filed if~~] If nonadmitted counsel has already filed an affidavit in compliance with Rule 24-106 NMRA in a lower court, then a copy of that affidavit shall be filed in the appellate court. Upon filing of the affidavit, nonadmitted counsel will be deemed admitted subject to the other terms and conditions of this subsection. Proof of service of the affidavit shall be made as provided in Rule 12-307 NMRA. A separate motion and order are not required for the participation of nonadmitted counsel.

(3) For good cause shown, the appellate court may revoke the privilege granted herein of any nonadmitted counsel to appear in any proceeding.

(4) New Mexico residents not admitted to practice law in this state may not appear as counsel, except pro se.

F. Nonadmitted counsel in criminal cases.

(1) Counsel not admitted to practice law in New Mexico, but who are admitted to practice law and in good standing in another state or territory, may, upon compliance with Rule 5-108 NMRA sign briefs, motions and other papers, and may orally argue before the appellate court, only in association with counsel admitted to practice law and in good standing in New Mexico. New Mexico counsel shall sign the first paper filed in the appellate court, and New Mexico counsel's name and address shall appear on all subsequent papers filed. Unless excused by the appellate court, New Mexico counsel shall also be present in person in all proceedings.

(2) Nonadmitted counsel shall state by affidavit that they are admitted to practice law and are in good standing to practice law in another state or country and that they have complied with Rule 5-108 NMRA. Such affidavit shall be filed with the first paper filed in the appellate court, or as soon as practicable after a party decides on representation by nonadmitted counsel. If nonadmitted counsel has already filed an affidavit in compliance with Rule 5-108 NMRA in a lower court, then a copy of that affidavit shall be filed in the appellate court. Upon filing of the affidavit, nonadmitted counsel will be deemed admitted subject to the other terms and conditions of this subsection. Proof of service of the affidavit shall be made as provided in Rule 12-307 NMRA. A separate motion and order are not required for the participation of nonadmitted counsel, unless nonadmitted counsel has not previously complied with Rule 5-108 NMRA.

(3) For good cause shown, the appellate court may revoke the privilege granted herein of any nonadmitted counsel to appear in any proceeding.

(4) New Mexico residents not admitted to practice law in this state may not appear as counsel, except pro se.

G. Capital appellate counsel. The defendant in any appeal in a case in which a sentence of death may be imposed must be represented by at least two (2) attorneys, one of whom meets the minimum standards set forth in this paragraph for first-chair capital appellate defense attorneys and another who meets the minimum standards set forth in this paragraph for first-chair or second-chair capital appellate defense attorneys.

(1) The minimum standards for first-chair capital appellate defense attorneys are:

- (a) membership in good standing of any state bar;
- (b) a minimum of five (5) years active trial or appellate experience in criminal cases as a licensed attorney immediately preceding appointment;
- (c) prior experience in the last three (3) years as lead counsel or co-counsel in the appeal of at least six (6) felony jury convictions in federal or state court, at least two of which were murder convictions; and
- (d) completion within two (2) years prior to entry of appearance of at least twelve (12) hours of training in capital representation in a program approved by the New Mexico Department of the Public Defender and qualified for New Mexico MCLE credit.

(2) The minimum standards for second-chair capital appellate defense attorneys are:

- (a) membership in good standing of any state bar;
- (b) a minimum of three (3) years active trial or appellate experience in criminal cases as a licensed attorney immediately preceding appointment;
- (c) prior experience in the last eighteen (18) months as lead counsel in the appeal of at least four (4) felony convictions in state or federal court; and
- (d) completion within two (2) years prior to entry of appearance of at least twelve (12) hours of training in capital representation in a program approved by the New Mexico Department of the Public Defender and qualified for New Mexico MCLE credit. This requirement may be met within one (1) year after appointment as second-chair counsel in a death penalty appeal.

The district court shall require any attorney who enters an appearance to show that the attorney is a qualified capital appellate defense attorney in accordance with the requirements of this paragraph. If the district court determines that the defendant is not represented by two (2) qualified capital appellate defense attorneys, at least one of whom is qualified to act as first chair, the district court, in the case of indigent defendants, shall order the New Mexico Department of the Public Defender to appoint one or more qualified attorneys to ensure that the defendant is represented as required by this paragraph.

[As amended, effective September 1, 1993; January 1, 1997; May 1, 2003; January 20, 2005; as amended by Supreme Court Order 05-8300-18, effective October 11, 2005; by Supreme Court Order 07-8300-24, effective November 1, 2007; as amended by Supreme Court Order No. 09-8300-010, effective May 6, 2009; as amended by Supreme Court Order _____, effective _____.]
